Appendix I

OPINIONS AND JUDGMENTS OF THE COURTS BELOW

OPINION OF COURT OF APPEALS FOR THE NINTH CIRCUIT DATED JULY 8, 1968

United States Court of Appeals
for the Ninth Circuit

No. 22,050

N.V. STOOMVAART MAATSCHAPPIJ, "NEDERLAND" and the S.S. "ROTTI",
Appellants,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, et al.;
Appellees.

[July 8, 1968]

Appeal from the United States District Court
for the Northern District of California

Before: BROWNING and CARTER, Circuit Judges, and FOLEY, District Judge*

PER CURIAM:

The district court filed a written opinion, *Standard Oil Company of California v. The S.S. ROTTI*, ____F.S.____.

On the basis of that opinion, the judgment is Affirmed.

*Hon. Roger D. Foley, United States District Judge, District of Nevada, sitting by designation.

OPINION OF THE DISTRICT COURT
DATED JULY 2, 1959

In the United States District Court
for the Northern District of California

No. 29,545
IN ADMIRALTY

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,
Libelant,

vs.

THE S.S. ROTTI, her engines, tackle, apparel and appurtenances, and N.V. STOOMVAART MAATSCHAPPIJ "NEDERLAND", a corporation,
Respondents.

N.V. STOOMVAART MAATSCHAPPIJ "NEDERLAND", a corporation,
Cross Libelant,

vs.

THE S.S. J. H. TUTTLE, her engines, tackle, apparel and appurtenances, and STANDARD OIL COMPANY OF CALIFORNIA, a corporation,
Cross Respondents.

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,
Claimant.

MEMORANDUM OPINION

This is an action in Admiralty arising as a result of a collision between the S.S. Rotti, owned by respondent N.V. Stoomvaart Maatschappij "Nederland", and the

S.S. J. H. Tuttle, owned by libelant Standard Oil Company of California. At the start of the trial herein, the Tuttle conceded its fault, so that the only question remaining is whether the Rotti is entitled to recover on its cross-libel.

The collision occurred on August 29, 1965 at 18:57 in the Main Ship Channel in the entrance to San Francisco Bay between buoys 4 and 6, closer to buoy 4. The Rotti was proceeding inbound on the southern side of the channel on a course of 70°; the Tuttle, at the time of collision, was on a course of approximately 325°, resulting from a last minute hard turn to starboard. The bow of the Rotti collided with the port side of the Tuttle, closer to the bow.

The Rotti first became aware of the Tuttle when her radar showed the Tuttle as an outbound vessel heading in a westerly direction on the northern part of the channel. The Rotti was then proceeding at about 12 knots. She entered the fog bank which she had earlier seen developing around buoy 4 at the same speed of 12 knots. She did not make any substantial change in her engine speeds until 18:52, when she saw the Tuttle on her radar proceeding southerly across the channel. At this time, the Rotti put her engines at stop. She remained at stop for only one-half minute, changing her engines to half ahead then full ahead when the Tuttle appeared to be proceeding westerly on the south side of the channel. At 18:54½, the Rotti put her engines at stop-full astern when her radar showed the Tuttle to be heading back into the channel. However, she put her engines back to stop at 18:55, when her radar showed the Tuttle apparently proceeding on a course parallel to the channel and that of the Rotti's.

At 18:56, it was clear from the Rotti's radar that the Tuttle was turning back into the channel, and her engines were put at full astern. The accident occurred one minute later.

In attempting to exonerate herself from liability, the Rotti relies on what she terms her "prudent and careful response" to the Tuttle's "navigational" acts. While it is true from the evidence that the Rotti's response to the Tuttle's erratic and unexplained maneuvers was based on the use of information gained from radar, this use of radar in and of itself is not sufficient to exempt the Rotti from the "moderate speed" requirement of Rule 16(a) of the International Rules for Preventing Collisions at Sea, which provides in part:

> Every vessel . . . . shall, in fog . . . . or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions.

The Radar Amendment to Rule 16 [33 U.S.C. § 1077(c), effective September 1, 1965] provides:

> A power-driven vessel which detects the presence of another vessel forward of her beam before hearing her fog signal or sighting her visually may take early and substantial action to avoid a close-quarters situation, but, if this cannot be avoided, she shall, so far as the circumstances of the case admit, stop her engines in proper time to avoid collision and then navigate with caution until danger of collision is over.

This rule must be read in conjunction with the Annex to the Rules (33 U.S.C. § 1094, effective September 1, 1965) which reads in part:

(2) A vessel navigating with the aid of radar in restricted visibility must, in compliance with Rule 16(a), go at a moderate speed. Information obtained from the use of radar is one of the circumstances to be taken into account when determining moderate speed. In this regard it must be recognized that small vessels, small icebergs and similar floating objects may be not detected by radar. Radar indications of one or more vessels in the vicinity may mean that "moderate speed" should be slower than a mariner without radar might consider moderate in the circumstances.

While these rules were not in effect at the time of the collision, the parties are in agreement that they reflect the standard of care required of ships having radar at that time. See, e.g., *Skibs A S Siljestad v. S S Mathew Luckenbach,* 215 F.Supp. 667 (S.D.N.Y. 1963).

Using these rules as a standard in the instant case, the Court is of the opinion that the Rotti was going at an immoderate speed in violation of Rule 16(a), *supra,* when she entered the fog at 12 knots. While she did "see" the Tuttle on radar and apparently knew its course at the time of entering the fog, the Rotti was under a duty to reduce her speed when entering the fog so as to avoid the possibility of collision. *The Julia Luckenbach,* 219 Fed. 600 (E.D. Va. 1914), affd. 239 F.2d 94 (4th Cir. 1916); *The Edward E. Loomis,* 86 F.2d 705 (2nd Cir. 1936); *Villain & Fassio E Compagnia v. Tank Steamer E. W. Sinclair,* 207 F.Supp. 700 (S.D.N.Y. 1962).

The burden is thus put on the Rotti to show that this statutory violation could not have contributed to the collision with the Tuttle. *The Pennsylvania,* 86 U.S. 125

(1873); *Anglo-Saxon Petroleum Co. v. United States,* 224 F.2d 86 (2d Cir. 1955). The Court is of the opinion that the Rotti had some headway through the water at the time of impact. We reach this conclusion in light of the records introduced into evidence relating to the engine speeds of the Rotti from the time she picked up her pilot at 18:33 until the time of collision. (Lib. Exh. 6; Hoedemaker Deposition). Although there was testimony that the Rotti was stopped dead in the water at the time of collision, this Court cannot ignore the fact that the Rotti's first stop at 18:52 was ineffectual to slow her progress through the water, in light of her maneuvers to one-half and then full ahead one half minute later. The Rotti must have been going close to her original 12 knots at 18:54½, two and one-half minutes prior to the collision. Her maneuvers thereafter were not enough to stop her dead in the water at the time of impact. If she had been moving at moderate speed when entering the fog, instead of at 12 knots, she would have avoided the collision.

Again, this Court refers to the requirement of Rule 16(c), *supra.* We read this amendment, particularly the requirement to take "early and substantial" action, as placing a duty on the Rotti in the instant case to at least have *remained* at "stop" five minutes before the collision until the risks of collision were over; in other words, the law placed a duty on the Rotti, when "sighting" the Tuttle via radar to take meaningful action at an early time, not at the last minute. All the Rotti needed to do was to stop and wait until the Tuttle had passed her safely, instead of kicking her engines ahead five minutes before the collision. See *Afran Transport Company v. The Bergechief,* 170 F.Supp. 893 (S.D.N.Y. 1959).

In light of what we have said above, damages will be apportioned equally between the parties. *Halcyon Lines v. Haenn Ship Corp.*, 342 U.S. 282 (1952). The amount of such damages will be determined at a later date to be set by this Court. Libelant will prepare findings of fact, conclusions of law, and judgment not inconsistent with this opinion.

SO ORDERED.

Dated: February 28, 1967

Albert C. Wollenberg
United States District Judge

Filed February 28, 1967,
James P. Welsh, Clerk.

Appendix II

STATUTES AND RULES INVOLVED

A. Rules in effect at time of collision, August 29, 1965.

SPEED IN FOG

Rule 16 (a) (33 U.S.C. § 145n):

"(a) Every vessel, or seaplane when taxi-ing on the water shall, in fog, mist, falling snow, heavy rainstorms or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions.

"(b) A power-driven vessel hearing, apparently, forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

NARROW CHANNELS AND BENDS THEREIN

Rule 25 (a) (33 U.S.C. § 146i):

"(a) In a narrow channel, every power-driven vessel when proceeding along the course of the channel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

B. Rules which became effective September 1, 1965.

SPEED IN FOG

Rule 16 (a) (33 U.S.C. § 1077):

"(a) Every vessel, or seaplane when taxi-ing on the water, shall, in fog, mist, falling snow, heavy rainstorms, or any other condition similarly restricting visibility, go

at a moderate speed, having careful regard to the existing circumstances and conditions.

"(b) A power-driven vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

"(c) A power-driven vessel which detects the presence of another vessel forward of her beam before hearing her fog signal or sighting her visually may take early and substantial action to avoid a close-quarters situation, but, if this cannot be avoided, she shall, so far as the circumstances of the case admit, stop her engines in proper time to avoid collision and then navigate with caution until danger of collision is over.

ANNEX TO THE RULES
(33 U.S.C. § 1094)

Recommendations on the use of radar information as an aid to avoiding collisions at sea.

"(1) Assumptions made on scanty information may be dangerous and should be avoided.

"(2) A vessel navigating with the aid of radar in restricted visibility must, in compliance with Rule 16(a), go at a moderate speed. Information obtained from the use of radar is one of the circumstances to be taken into account when determining moderate speed. In this regard it must be recognized that small vessels, small icebergs and similar floating objects may be not detected by

radar. Radar indications of one or more vessels in the vicinity may mean that "moderate speed" should be slower than a mariner without radar might consider moderate in the circumstances.

"(3) When navigating in restricted visibility the radar range and bearing alone do not constitute ascertainment of the position of the other vessel under Rule 16(b) sufficiently to relieve a vessel of the duty to stop her engines and navigate with caution when a fog signal is heard forward of the beam.

"(4) When action has been taken under Rule 16(c) to avoid a close quarters situation, it is essential to make sure that such action is having the desired effect. Alterations of course or speed or both are matters as to which the mariner must be guided by the circumstances of the case.

"(5) Alteration of course alone may be the most effective action to avoid close quarters provided that:

"(a) There is sufficient sea room.

"(b) It is made in good time.

"(c) It is substantial. A succession of small alterations of course should be avoided.

"(d) It does not result in a close quarters situation with other vessels.

"(6) The direction of an alteration of course is a matter in which the mariner must be guided by the circumstances of the case. An alteration to starboard, particularly when vessels are approaching apparently on opposite or nearly opposite courses, is generally preferable to an alteration to port.

"(7) An alteration of speed, either alone or in conjunction with an alteration of course, should be substantial. A number of small alterations of speed should be avoided.

"(8) If a close quarters situation is imminent, the most prudent action may be to take all way off the vessel."

Appendix III

EXTRACTS FROM DISTRICT COURT RECORD ON QUESTIONS HERE PRESENTED

A. Conclusions of Law as stated by District Court (C.T. 180, 181)

CONCLUSIONS OF LAW

From the foregoing facts the Court concludes:

1. The "Tuttle" by its admission, committed faults which contributed to the collision.

2. The "Rotti's" 12-knot speed upon entering the dense fog was immoderate and in violation of Rule 16(a) of the International Rules for Preventing Collisions at Sea. Had she slowed to a moderate speed upon entering the fog and thereafter navigated prudently, the collision would not have happened. Her failure to slow to a moderate speed was a fault which contributed to the collision.

3. The "Rotti" should have recognized that a risk of collision existed at least as early as 1852 when she observed the position of the "Tuttle" on radar and first stopped her engines. Had she remained at stop after 1852 the collision would not have happened. Her failure to remain at stop and wait until danger of collision was over was a fault which contributed to the collision.

4. The "Rotti's" kick of her engines to full ahead in the dense fog, less than five minutes before the collision, was imprudent. Had she not done so the collision would not have happened. Her kick ahead of her engines was a fault which contributed to the collision.

5. The "Rotti" failed to meet the standard of care required of ships having radar as set forth in the Radar Amendment to Rule 16 (33 U.S.C. 1077(c)) in the respects set forth above.

6. The conclusions set forth in the memorandum of opinion of the Court, filed on February 28, 1967, are adopted as additional conclusions of law herein.

7. Both the "Tuttle" and the "Rotti" committed substantial faults which contributed to the collision. In accordance with the general maritime rule in cases such as these, damages shall be apportioned equally between the parties.

* * * * *

B. Remarks of District Court following conclusion of evidence, extracted from Reporter's Transcript.

(R.T. 380 line 13 to line 20):

Mr. Buxton (Trial counsel for respondent herein): Half-sight, full-sight; in the Ninth Circuit the rule of Silver Palm still applies and in other circuits it's variously articulated, but the same rules apply. All I am saying, Your Honor, is that radar does not reduce or make the requirement of moderate speed more lenient.

The Court: All right. I don't think there is any discussion about that.

(R.T. 402 lines 8 to 17):

There's no case that they have found that's been cited, and I couldn't find any, that says that speed in the fog or failure to stop when you have knowledge of something ahead of you in a fog is a minor fault. It's just not a minor fault.

The Court: I agree with you there.

Mr. Buxton: Major-minor fault just doesn't apply.

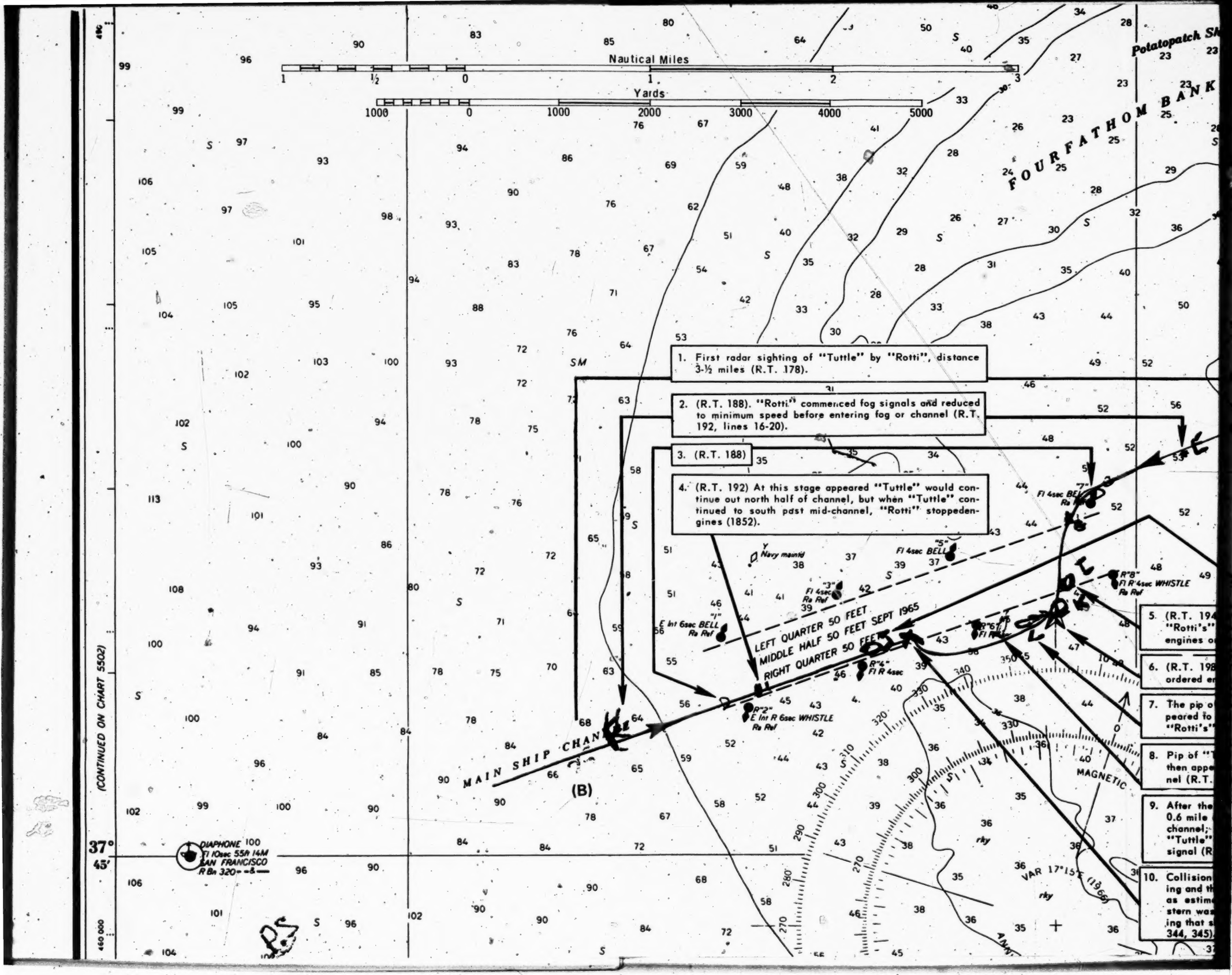
The Court: I think that's correct.

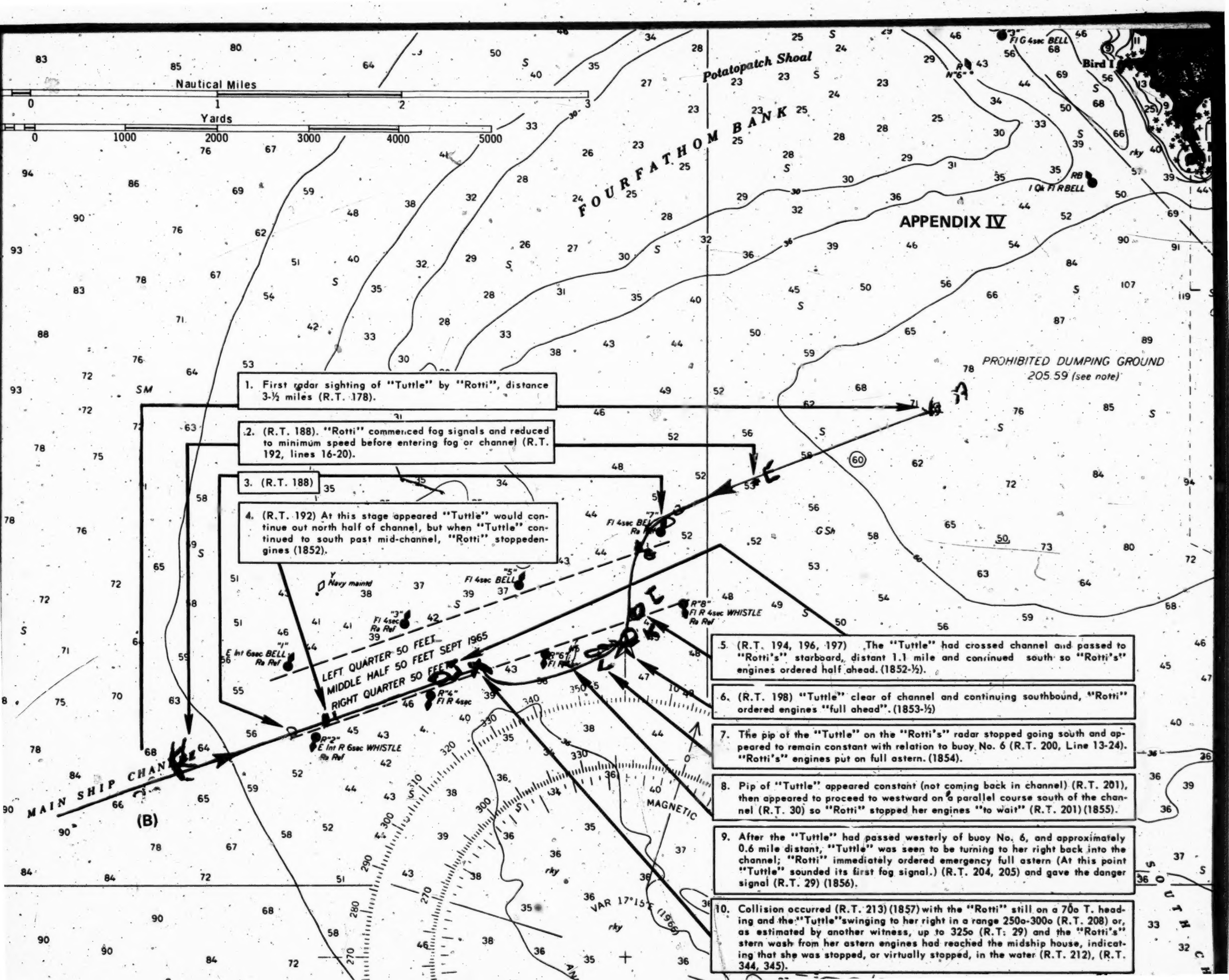
(R.T. 407 lines 13 to 20):

Mr. Buxton: But the rule of Silver Palm does not depend upon hearing a blast. The rule of Silver Palm is under Rule 16(a), which says you have got to go at moderate speed.

The Court: Moderate speed; and they attempt to define what moderate speed is—so as to be able to stop within half the distance of your visibility.

Mr. Buxton: Within half the distance of your visibility.


Nautical Miles
1 ½ 0 1 2 3
Yards
1000 0 1000 2000 3000 4000 5000
FOURFATHOM BANK
Potatopatch SH
1. First radar sighting of "Tuttle" by "Rotti", distance 3-½ miles (R.T. 178).
2. (R.T. 188). "Rotti" commenced fog signals and reduced to minimum speed before entering fog or channel (R.T. 192, lines 16-20).
3. (R.T. 188)
4. (R.T. 192) At this stage appeared "Tuttle" would continue out north half of channel, but when "Tuttle" continued to south past mid-channel, "Rotti" stoppedengines (1852).
LEFT QUARTER 50 FEET
MIDDLE HALF 50 FEET SEPT 1965
RIGHT QUARTER 50 FEET
MAIN SHIP CHANNEL
(B)
Navy mantid
Fl 4sec BELL
"5"
"3"
Fl 4sec
Ra Ref
E Int 6sec BELL
Ra Ref
"1"
R"8"
Fl R 4sec WHISTLE
Ra Ref
R"6"
Fl R 4sec
R"2"
E Int R 6sec WHISTLE
Ra Ref
MAGNETIC
VAR 17°15'E (1965)
DIAPHONE 100
Fl 10sec 55ft 14M
SAN FRANCISCO
R Bn 320°-8
37°
45'
(CONTINUED ON CHART 5502)
460 000


Nautical Miles
0 1 2 3
Yards
0 1000 2000 3000 4000 5000
Potatopatch Shoal
FOURFATHOM BANK
APPENDIX IV
PROHIBITED DUMPING GROUND
205.59 (see note)
1. First radar sighting of "Tuttle" by "Rotti", distance 3-½ miles (R.T. 178).
2. (R.T. 188). "Rotti" commenced fog signals and reduced to minimum speed before entering fog or channel (R.T. 192, lines 16-20).
3. (R.T. 188)
4. (R.T. 192) At this stage appeared "Tuttle" would continue out north half of channel, but when "Tuttle" continued to south past mid-channel, "Rotti" stoppedengines (1852).
5. (R.T. 194, 196, 197) The "Tuttle" had crossed channel and passed to "Rotti's" starboard, distant 1.1 mile and continued south so "Rotti's" engines ordered half ahead. (1852-½).
6. (R.T. 198) "Tuttle" clear of channel and continuing southbound, "Rotti" ordered engines "full ahead". (1853-½)
7. The pip of the "Tuttle" on the "Rotti's" radar stopped going south and appeared to remain constant with relation to buoy No. 6 (R.T. 200, Line 13-24). "Rotti's" engines put on full astern. (1854).
8. Pip of "Tuttle" appeared constant (not coming back in channel) (R.T. 201), then appeared to proceed to westward on a parallel course south of the channel (R.T. 30) so "Rotti" stopped her engines "to wait" (R.T. 201) (1855).
9. After the "Tuttle" had passed westerly of buoy No. 6, and approximately 0.6 mile distant, "Tuttle" was seen to be turning to her right back into the channel; "Rotti" immediately ordered emergency full astern (At this point "Tuttle" sounded its first fog signal.) (R.T. 204, 205) and gave the danger signal (R.T. 29) (1856).
10. Collision occurred (R.T. 213) (1857) with the "Rotti" still on a 70o T. heading and the "Tuttle" swinging to her right in a range 250o-300o (R.T. 208) or, as estimated by another witness, up to 325o (R.T. 29) and the "Rotti's" stern wash from her astern engines had reached the midship house, indicating that she was stopped, or virtually stopped, in the water (R.T. 212), (R.T. 344, 345).
LEFT QUARTER 50 FEET
MIDDLE HALF 50 FEET SEPT 1965
RIGHT QUARTER 50 FEET
MAIN SHIP CHANNEL
(B)
MAGNETIC
VAR 17°15' (1966)
Bird I
"3" Fl G 4sec BELL
"7" Fl 4sec BELL Ra Ref
"5" Fl 4sec BELL
"3" Fl 4sec Ra Ref
"1" E Int 6sec BELL Ra Ref
"2" E Int R 6sec WHISTLE Ra Ref
"4" Fl R 4sec
"6" Fl R
"8" Fl R 4sec WHISTLE Ra Ref
N"6"
I Qk Fl R BELL
Navy mannd
SM
GSA